IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 664 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-
and
Hon'ble MR.JUSTICE D.P.BUCH sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAM @ DALIYO SAVJI

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 664 of 1992
Ms.Sadhna Sagar, Advocate, (amicus curie) for Petitioner No. 1
Mr.M.A.Bukhari, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 04/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellant - accused has challenged in this Appeal the impugned Judgment and order of conviction and sentence dated 17.7.1992 passed by the learned Addl. Sessions Judge, Bhavnagar, convicting the accused for the offence punishable u/s.302 of Indian Penal Code and sentenced him to suffer life imprisonment.

2. Initially Mr.H.M.Chinoi was appointed as amicus curie to defend the appellant - accused and on his death Mr.Mehul Chinoi was appointed, but he was not available and therefore Ms.Sadhna Sagar was appointed as amicus curie to assist the Court in this matter.

3. Learned A.P.P. Shri M.A.Bukhari, has produced before us the photostat copy of the Jail Report of the appellant - accused which shows that at least on two occasions the appellant accused was absconding. Initially he was temporary released on bail for a period of 10 days by this Court from 8.5.1993 to 18.5.1993, but thereafter he had not surrendered in time. He was absconding. He was arrested by the Police on 10.4.1994 and sent to Jail. Thus, there was a delay of 327 days on the part of the appellant - accused in 1993. He enjoyed furlough thrice. 4th time when he was released on furlough on 13.1.2001 he did not surrender in time and absconded for nearly 158 days. After he was arrested by the Police he was sent in Jail and since then he is in jail. Thus, in all he had absconded and remained out of jail for 485 days. Be that as it may. We are not concerned with this record because after hearing the learned counsel for the parties we are of the considered opinion that the learned Judge has not committed any error in convicting the accused and sentenced him to suffer life imprisonment. The question regarding sentence could have been considered only if this Court would have come to the conclusion that the accused could not have been convicted for a major offence u/s.302 I.P.Code and he could have been convicted for a lesser offence.

4. As per the prosecution case there was one sided love of accused Ghanshyam with deceased Bhartiben. Accused was hardly aged 19 years at the time of the incident and Bharti was a minor girl aged 16 years. The incident in question took place early in the morning hours of 18.12.1990 at about 7.00 a.m. when deceased Bharti went to bring milk for her father. At that time the accused was hiding himself in the plot and when

Bharti was coming back with milk he assaulted her with knife and gave number of blows on chest, stomach and other parts of the body of deceased Bhartiben, only because he was scolded just 2 days back regarding the incident which took place on 16.12.1990 at about 8.00 p.m. in the night when the accused tried to tease deceased Bhartiben. Parsottam Madhabhai informed the complainant Virsing Bachubhai, P.W.2, Ex.23, that his daughter is lying in blood pool near the house of Bhikhabhai. Therefore, he immediately went there. He asked his daughter Bharti that what happened. Bharti stated that Ghaniya gave her knife blows. He immediately called Rickshaw and removed her in the hospital. However, she died at about 10.00 a.m. He lodged F.I.R. which is at Ex.24. After completing the investigation the police filed charge-sheet against the accused for the offence u/s.302 I.P.Code as well as u/s.135 of the Bombay Police Act.

5. The prosecution has examined (1) Virsing Bachubhai, P.W.2, Ex.23, who is father of deceased Bhartiben, who lodged complaint Ex.24 before the Police, (2) Himatbhai Jivabhai, neighbour, P.W.3, Ex.25, (3) Gordhanbhai Dhanjibhai, brother-in-law of accused, P.W.4, Ex.26. P.W.3 Himatbhai and P.W.4 Gordhan turned hostile. However, while turning hostile P.W.3 Himatbhai has at least stated in his evidence that when he went there he heard Bharti saying that "What I have done to Ghaniya ?" It is true that Himat has not supported the prosecution case on the point that Bharti stated that Ghaniya accused Ghanshyam gave knife blow, but his version that Bharti stated that what she has done to Ghaniya corroborates the evidence of Virsing.

6. Thus, in the instant case the entire prosecution case based upon the sole testimony of P.W.2 Virsing Bachubhai, who is none-else but the father of deceased Bhartiben. We are conscious of the fact that he was closely related to deceased Bharti. We are also conscious that just 2 days before the incident accused was scolded by the witness and his brother for teasing his daughter. Keeping in mind this, we have carefully considered his evidence.

7. It may be stated that the incident alleged to have taken place at about 7.00 a.m. on 18.12.1990. When it was brought to the notice of Virsing he immediately run and found his daughter lying in blood pool. He immediately removed her in hospital. As per his evidence when he asked his daughter Bharti she had clearly stated that accused Ghaniya @ Ghanshyam gave knife blows to her.

If she was not in a position to name the accused then the complainant Virsing would not have disclosed the name of accused Ghanshyam in his F.I.R. which was lodged without wasting further time. It may be stated that he has clearly denied the suggestions made to him in his cross examination that when he went there Bharti was seriously injured and she was unconscious and not able to speak. He has also denied the suggestion that he has concocted the say that Bharti told him that Ghaniya beat her and he has falsely giving the name of accused. It may be stated that suggestion was made to him in his cross examination that on his complaint his neighbour Hirabhai was arrested by the Police before 15 days. He admitted the same and stated that regarding the quarrel which took place before 15 days of the incident with Hirabhai he lodged complaint before the police for which he was not only arrested, but after 24 hours he was released on Bail. Thus, in a most natural manner Virsing has deposed.

8. Submission was made by Ms.Sadhna Sagar on behalf of the appellant accused that Virsing had more than one enemy, therefore, when nobody has witnessed the incident then possibly false involvement of the present appellant - accused cannot be ruled out because just 2 days before the incident another incident took place where the witness Virsing scolded the accused by teasing his daughter. It is true that just few days before the incident another incident took place between witness Virsing and the accused and the accused was scolded by Virsing for teasing his daughter. It is also true that 15 days before he had quarrel with his neighbour Hirabhai, but that does not mean that he would falsely involve the present accused only because just 2 days before another incident took place between Virsing and neighbour Hirabhai. We can not overlook the fact that immediately after assault witness Virsing rushed to the place of incident and asked Bharti who caused injury to her and in reply to that she has clearly stated that accused gave her knife blows. In that view of the matter we do not see any reason not to rely upon the sole oral testimony of Virsing.

9. Ms.Sadhna Sagar submits that when the deceased was examined by Doctor she had profused bleeding and she was not able to speak and therefore she might not be in a position to give the name of accused when her father came immediately after the incident.

10. Dr.Chetan Dinkarrai, P.W.10, Ex.41, stated that when he examined Bharti it was 9.30 p.m. and before that she was examined by Dr.Agheda in Emergency ward. Having

seen the case papers at Ex.22 he stated that she was serious and in last stage. She died at about 10.00. However, he was not able to state about her physical condition when she was admitted in the hospital.

11. It is surprising to note that Dr.Chetan was not at all cross examined on the point as to whether she was not able to speak or not when he examined deceased Bharti.

12. Another Dr.Dhirajlal Girdharlal, P.W.15, Ex.48, stated in his evidence that when he was in Emergency Ward Bhartiben was brought in hospital in an injured condition. When he examined her, her condition was very delicate. In his cross examination he has stated that injuries were of serious in nature, but he has specifically denied the suggestion that they were not getting pulse of deceased Bharti. He has admitted that they had given Dexo Injection to the patient. However, he has clearly stated that it is not true that because of the injuries patient would not be in a position to speak. However, Ms.Sadhna Sagar tried to submit that as per the evidence of Dr.Dhirajlal, Bhartiben would not be in a position to speak. Even assuming for the sake of argument that when Bhartiben was examined by Dr.Dhirajlal she may not be in a position to speak, because her condition was deteriorated and she was in last stage, but that does not mean that Bhartiben would not be in a position to speak immediately after the incident when her father reached to the place of incident. She had profused bleeding and the incident took place around 7.30 a.m. whereas she was examined by the doctor at about 10.00 a.m. In that view of the matter, we could not give any importance on the submissions made by Ms.Sadhna Sagar that Bhartiben would not have given the name of accused Ghanshyam. It is difficult for us to believe that Virsing concocted false story and falsely involved the accused Ghanshyam within a short time of the incident. If deceased Bharti had not disclosed the name of accused then he would not have stated in F.I.R. Ex.24 which was lodged immediately after the incident.

13. We have carefully gone through the reasons assigned by the learned Judge for convicting the accused and we are in complete agreement with the same.

14. In view of above discussion, we do not find any substance or merit in this Appeal. Accordingly, it fails and is hereby dismissed.

sd/-

(B.J.Shethna, J.)

Date : December 04, 2001 sd/-
(D.P.Buch, J.)

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